

# **EXHIBIT 1**

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP, JUDGE

WAYMO, LLC,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. C 17-00939 WHA
	)	
UBER TECHNOLOGIES, INC.,	)	
et al.,	)	
	)	
Defendants.	)	
<hr/>		San Francisco, California
		Thursday, April 27, 2017

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

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Reported By: BELLE BALL, CSR 8785, CRR, RDR  
Official Reporter, U.S. District Court

(Appearances continued, next page)

1 in for Morrison & Foerster to represent one of the defendants in  
2 the case, that being Otto Trucking.

3 **THE COURT:** All right. I did see that. I did not realize I  
4 had to sign it, but I will get that done, at some point. All  
5 right.

6 **MR. GONZÁLEZ:** Thank you.

7 **THE COURT:** So we are here on a motion to compel  
8 arbitration. It's your motion.

9 **MR. GONZÁLEZ:** Your Honor, Mr. Hume is going to present our  
10 argument.

11 **THE COURT:** Fine.

12 **MR. HUME:** Good morning, Your Honor. Hamish Hume from Boies  
13 Schiller for Uber and Otto Moto.

14 Your Honor, the Court asked four seemingly very on-point  
15 questions. I don't know if the Court would like to hear the  
16 answer to that first.

17 **THE COURT:** Let's do this, if you don't mind.  
18 Who is going to respond on your side?

19 **MR. VERHOEVEN:** I am, Your Honor.

20 **THE COURT:** Okay. So, let's go through these four  
21 questions. And then hopefully we will still have some time for  
22 you to do some argument. The questions are really directed --  
23 the first two, anyway -- at Waymo.

24 So the first question is: Will Waymo forego any reliance in  
25 this case on any employment or other agreement with Levandowski

1 containing an arbitration clause?

2 MR. VERHOEVEN: So --

3 THE COURT: Wait, wait.

4 Will Waymo seek to use any such agreement for any purpose in  
5 this case?

6 Okay, so what's the answer to that?

7 MR. VERHOEVEN: So if I could, Your Honor, I would break it  
8 up into each question.

9 THE COURT: Sure.

10 MR. VERHOEVEN: So with respect to the first question, the  
11 answer is: Yes.

12 THE COURT: Wait a minute.

13 MR. VERHOEVEN: Waymo will forego any reliance on the terms  
14 of any employment or other agreement with Levandowski containing  
15 an arbitration clause.

16 THE COURT: Answer: Yes. Okay. How about the second  
17 question?

18 MR. VERHOEVEN: The second questions is: Will Waymo seek to  
19 use any such agreement for any purpose in the case?

20 The answer is: No, provided that Uber does not open the  
21 door by reference to these agreements or the lack thereof of  
22 those agreements, which is something that we would just have to  
23 address down the road if they tried to inject them into the  
24 case, somehow. But otherwise the answer is: No.

25 THE COURT: Well, all right.

1        So the other side in the briefing has said even if you're  
2        not relying on the contracts, per se, the moment will come in  
3        the case when you have got to prove up that these were trade  
4        secrets. And one of the things that you look at to see if it  
5        was a trade secret was: Did your company have security measures  
6        to safeguard the confidentiality of the information?

7        **MR. VERHOEVEN:** (Nods head)

8        **THE COURT:** To which you would normally want to say: Well,  
9        we made him sign an agreement that he would keep it  
10       confidential. And we made everybody else sign a similar  
11       agreement.

12       I mean, I'm -- I think that's one of the things. It's not  
13       the only way to do it, but that would be one of the things that  
14       you would normally point to.

15       So, what is your answer to that?

16       **MR. VERHOEVEN:** My answer to that, Your Honor, is we have  
17       plenty of other evidence to support that standard other than  
18       specifically relying on any term in Mr. Levandowski's employment  
19       agreement.

20       **THE COURT:** Well --

21       **MR. VERHOEVEN:** So we will not --

22       **THE COURT:** To be --

23       **MR. VERHOEVEN:** Sorry.

24       **THE COURT:** But does that mean that you will not refer to  
25       that in your -- in presentation to the jury to try to show that

1 the company had plenty of ways to maintain confidentiality?

2 **MR. VERHOEVEN:** We would not refer to Mr. Levandowski's  
3 employment agreements or any of them in an effort to show that  
4 we're maintaining confidentiality.

5 We may ask your Court -- and it would be only with  
6 permission -- whether we could talk about our general policy  
7 that employees sign employment agreements. But if Your Honor  
8 believes that is too close, then we won't do that either.

9 We have plenty of evidence to support our measures that we  
10 have taken. And we have outlined those in our brief. I can go  
11 over them if you would like, Your Honor.

12 **THE COURT:** Well, let's -- I realize you've got more to your  
13 trade secrets quiver than that one arrow. But, okay.

14 What's wrong with what -- what do you say in response to  
15 what I just heard on Question 1?

16 **MR. HUME:** Your Honor, Waymo doesn't get to pretend that  
17 these contracts don't exist in order to avoid arbitration. They  
18 want to invoke other sources of law, common law, the protections  
19 they took on their files, and say that's enough to show both  
20 that they took reasonable measures for confidentiality, and that  
21 Mr. Levandowski breached some duty of confidentiality.

22 But the fact of the matter is, Waymo chose to have a  
23 contract. They chose to have a contract with a lot of relevant  
24 provisions in it. A contract that talks about confidential  
25 information. A contract that talks about returning documents

1 when you leave. A contract that talks about inventions. And  
2 who owns what, including itemizing in an exhibit: Which  
3 inventions did Mr. Levandowski already own?

4 One only needs to read a little bit of the press in this  
5 case. You know, Mr. Levandowski had an active inventorship  
6 before he went to Google; he had side businesses while he was at  
7 Google. One of those businesses was bought back. The terms of  
8 this agreement (Indicating) tell us: What did they own, what  
9 did he own.

10 They chose to have that contract. They can't now litigate  
11 this case as if it were nonexistent, which is what they want to  
12 do to avoid arbitration. There's no case that allows that. And  
13 there are at least three cases in California state court that  
14 have required a plaintiff in this position to arbitrate, even  
15 though they did not want to rely in any way on the contract.  
16 They tried to stay as far away from it as they could.

17 **THE COURT:** Well, give me one such example.

18 **MR. HUME:** In the *Metalclad* case, Your Honor -- and if we  
19 could, we have some demonstratives, and --

20 **THE COURT:** No, no, no, wait, wait, wait. Wait. Just give  
21 me the -- no, I don't want -- I don't want those yet. Time  
22 permitting, we'll get to them. But give me the name of the  
23 case, because I -- I question what you just told me. And I want  
24 to just look at your best case.

25 **MR. HUME:** So let me be clear: None of these cases had a

1 their argument that there's inexplicable intertwining, as you  
2 may recall in the reply brief, there's a long list of bulleted  
3 points from our pleadings and complaint.

4 And as we pointed out in our surreply, not a single one of  
5 those quotes referenced or relied on the employment agreement  
6 with Mr. Levandowski. So the second aspect of the second prong  
7 is not met.

8 And so, even if Your Honor is a little skeptical about my  
9 comments about whether they need to be a signatory which I think  
10 is supported under the law, it's -- it's not going to turn the  
11 scales anyway, because you've got the second prong, which has  
12 been construed by the Court to refer to the obligations in the  
13 contract. It's not inextricably intertwined with the facts or  
14 whatever.

15 It's inter- -- sorry, Your Honor. It's inter- --  
16 intertwined, I'll say, with the causes of action -- or excuse  
17 me -- the clauses and the obligations in the employment  
18 agreement. And here, it's not. We're not relying on the  
19 employment agreement, at all. And so there's no intertwinement.

20 **THE COURT:** All right. Let's hear the other side's view of  
21 that.

22 **MR. HUME:** Your Honor, there's nowhere that Waymo was more  
23 clear with its employees and Mr. Levandowski on what the terms  
24 of their obligations were on keeping trade secret and other  
25 proprietary information confidential than the contract. So the



1 that Waymo's got to do the same thing? It's reciprocal? What  
2 do you say to that?

3 **MR. VERHOEVEN:** Well, what I say, I think it's important --  
4 well, first of all, we are not suing Levandowski. And so he's  
5 not a defendant in these claims. So there's no other side of  
6 the coin here.

7 **THE COURT:** Well, no, you're suing -- you're suing Uber  
8 based upon something that Levandowski did.

9 **MR. VERHOEVEN:** Based on something Uber did.

10 **THE COURT:** Yes, and Levandowski. You say in your complaint  
11 that he downloaded 14,000 --

12 **MR. VERHOEVEN:** That's correct, and he continued --

13 **THE COURT:** While he was an employee.

14 **MR. VERHOEVEN:** And he continued to do things that we allege  
15 were improper while he was a head of Uber's self-driving car  
16 program.

17 **THE COURT:** Well, I know, but the heart of your -- the key  
18 thing is that he downloaded 14,000 files while he was at your  
19 company, while he was an employee.

20 **MR. HUME:** And while they allege he was talking to us.  
21 Paragraphs 42 to 48.

22 **THE COURT:** I understand, but --

23 **MR. VERHOEVEN:** So --

24 **THE COURT:** So if it was reciprocal, why wouldn't you have  
25 to also arbitrate?

1 of its employees, and it's at the broadest possible arbitration  
2 agreement you can. And then when there's the least little  
3 possibility that maybe you're going to get stuck with the same  
4 reciprocal obligation, you're suddenly scrambling to try to  
5 figure out some -- so now you say: Oh, "anyone," "anyone," oh,  
6 that means anyone at Google. All right.

7 **MR. VERHOEVEN:** So be that as it may, Your Honor, the issue  
8 here is equitable estoppel. And that doesn't mean equity in the  
9 world. I just want to focus this.

10 The equitable estoppel we're talking about has been defined  
11 by the courts. And what it's talking about is precluding a  
12 party from claiming the benefits of the terms of the contract  
13 while simultaneously attempting to avoid the burdens of that  
14 contract.

15 **THE COURT:** I understand that. And I -- I think that tends  
16 to work in your favor. But I, nevertheless -- all right.  
17 Mr. Chatterjee, I'm going to give you a chance to say what you  
18 wanted to say, and then we have got to bring it to a close.

19 **MR. HUME:** We also, Your Honor, haven't had a chance to  
20 answer Questions 3 and 4.

21 **THE COURT:** We have run out of time. You see what's  
22 happened today. Been going since 8:00.

23 **MR. HUME:** I don't think they're controversial. Question  
24 No. 3 --

25 **THE COURT:** I may give you a chance to submit it under --

**CERTIFICATE OF REPORTER**

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Belle Ball   
Belle Ball, CSR 8785, CRR, RDR

Friday, April 28, 2017